IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4746 OF 2005

Miss Neha Achrekar. ... ... Petitioner
v/s.
Directorate of Technical Education. ... Respondent

Mr.Mihir Desai with Mr.R.A.Rodrigues and Mr.B.V.Phadnis for petitioner.

Mr.S.R.Nargolkar, AGP for respondent.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 20th July 2005

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. The petitioner herein is seeking an admission to the management course either for MBA or MMS for the academic year 2005-2006 though the examination under the State Government. She has appeared for the Central Entrance Test (CET) held by the State Government and has passed the CET. Her only problem is that though she claims to belong to an Other Backward Class (OBC), she did not have the Non-creamy layer certificate when she filled up the form. She has obtained it now and before the allotment of students to the colleges starts. That process is to be held tomorrow i.e. on 21st July 2005. Hence, urgency in the matter.

3. Considering the urgency of the matter, we issue Rule and make it returnable forthwith. Mr.Nargolkar, learned AGP, has fairly proceeded with the matter on instructions of one Mr.S.V. Kolla, Assistant Director (Technical), who is present in Court. He has opposed the reliefs in the petition without filing a reply. He has drawn our attention to the relevant rules in this behalf, which according to us, is sufficient by way of defence of the respondent.

4. As stated above, the petitioner appeared for the CET held in February 2005. While filling the form, she did not have the Non-creamy layer certificate. The instructions contained in the rules for admission to this course are annexed at Exhibit-A to the petition. In the rule on confirmation of submission of application forms at Application Receipt Centre (ARC), it is provided as under:-

> "If the ARC officer finds that the supporting documents are not enough to claim for a valid candidature then the submitted application form will not be accepted for any further processing. "

The petitioner, therefore, formed an impression that since she did not have the Non-creamy layer certificate and if she applies in the O.B.C. category, her application will be rejected. She, therefore, filled up the form in the open category.

5. It has so transpired that subsequently she did get the Non-creamy layer certificate on 15th June 2005. She did not have the caste certificate which was issued way back in the year 1994. As per the brochure of admissions in Annexure-4, it is provided in Clause-10 that confirmation of submission of online option forms of all types of candidates is permissible until 12th July 2005. The petitioner, therefore, gave a letter to the Authorities concerned on 12th July 2005 itself and produced her Non-Creamy Layer certificate and requested that her application be considered in the O.B.C. category. She was told orally that such an application would not be entertained. The petitioner's case is that if she claims through OBC, undoubtedly she has better chances of securing the admission.

6. Mr.Desai, learned Counsel appearing for

the petitioner, submitted that when one reads the above-referred rule along with a subsequent Notification dated 4th July 2005, it will be clear that the approach of the respondent was too technical. He relied upon the subsequent Notification dated 4th July 2005 which provided as under:-

> " Those candidates who have submitted the application form in reserved category and were unable to submit the Non-creamy layer Certificate, Caste Certificate and hence converted to open category can submit the same at the time of confirmation of option form at ARCs for availing the benefits of reservation. "

He submitted that this particular rule will have to be read to mean that those who have the documents in support showing the Non-creamy layer certificate status should be permitted to submit such documents at the time of confirmation of option which means up to 12th July 2005.

7. Mr.Nargolkar, learned AGP appearing for the respondent, submitted that this relaxation of 4th July 2005 will apply to only those candidates

who have submitted the application forms in reserved category. It is only in case of such candidates who fail to give the Non-creamy layer certificates that they have been given this option to submit the same later-on until the confirmation of option. He further submitted that the petitioner has not stated in the application form that she belongs to the OBC and, therefore, now she cannot be permitted to produce the Non-creamy layer certificate. That facility could have been availed of only if she had applied originally for the OBC community.

8. Mr.Desai countered his submission by pointing out that as per the rule which is included in the instructions to fill the form and which we have quoted earlier, if one did not have the necessary document at the relevant time, the application was liable to be rejected. It is in these circumstances that the petitioner had no option but to apply in open category. She has very fairly stated her position in her letter dated 12th July 2005. In his submission, a candidate like the petitioner herein should be entertained under the Notification of relaxation dated 4th July 2005.

9. We have noted the submissions of both the Counsel. If a strict view is taken perhaps Mr.Nargolkar would be right in making the submission that he has made. However, while looking to this provision of relaxation, one has certainly to look to other instructions which are given while filling up the form. The petitioner herein honestly filled the form in the open category since she did not have the Non-creamy layer certificate at the relevant time. A fact that she had been issued the caste certificate way back in the year 1994 is clear from the record. It is not an after-thought. Only the Non-creamy layer certificate remained to be obtained and on obtaining the same, she approached the Authorities within the limitation i.e. up to 12th July 2005. No prejudice is being caused to anybody inasmuch as she does have the certificate and she is making the same available to the Authorities within the time limit. It is not the case that she is giving the certificate any time thereafter.

10. In a matter like this, a highly technical and rigid attitude is not expected from the Authorities as held by the Apex Court in the case of **Dolly Chhanda vs. Chairman, JEE & ors. reported in AIR 2004 S.C. 5043**. In that matter,

the petitioner claimed an admission to a medical course on the footing that her father was in the armed forces and was a permanently disabled person. There was a slight delay in giving the relevant certificate. What the Apex Court observed in para-7 thereof is quite relevant. This para-7 reads as under:-

> " 7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the country. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or

> percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. "

11. Thus, as stated by the Apex Court, one must have the qualification at the relevant time, though the proof in support thereof may, in some cases, be made available a little later. In the present case, the petitioner did have the original documents of belonging to the OBC community and she also has the Non-creamy layer certificate. Both these documents are being made available before the cut off date. Surely, this will be a case which will be stronger than the one which was before the Apex Court as referred to hereinabove.

12. In the circumstances, we allow this petition and direct the respondent to treat the petitioner’s case as belonging to the reserved category and her application will be considered

when the options and colleges are decided i.e. on 21st July 2005.

13. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)